CF0000062544

(2)

Division Bench (Criminal)

IN THE HIGH COURT OF JUDICATURE AT JABALPUR (M.P.) .

Criminal Appeal No. 284 /1999

(1989)

APPELLANT : (On Jail)

LAGAN SAI, S/o Shri Budi Rawat
Aged about 55 years,
Occupation- Agriculturist,
R/o village Rajpur, P.S. Lailunga
District- Raigarh (M.P.)

29/1/99
D.K. Sharma
Advocate

VERSUS

RESPONDENT :

State of Madhya Pradesh,
Through Police Station Lailunga
District- Raigarh (M.P.)

CRIMINAL APPEAL UNDER SECTION 374(2) OF CRIMINAL PROCEDURE CODE.

(15)

HIGH COURT OF CHHATTISGARH : BILASPUR

CRIMINAL APPEAL NO. 284 OF 1999

Lagan sai

Vs.

State of Madhya Pradesh
(now Chhattisgarh)

JUDGMENT

HIGH COURT OF CHHATTISGARH : BILASPUR

CRIMINAL APPEAL NO. 284 OF 1999

Lagan sai

Vs.

State of Madhya Pradesh
(now Chhattisgarh)

Coram :- Hon'ble Shri Fakhruddin &
Hon'ble Shri Dhirendra Mishra, JJ

Ms. Sharmila Singhai, Advocate for the appellant.
Mr. Akhil Mishra, Panel Lawyer for the State.

J U D G M E N T

Per Dhirendra Mishra, J

Heard learned counsel for the parties.

2. Appellant Lagan Sai preferred this appeal from prison as he has been convicted by the learned Second Additional Sessions Judge, Raigarh in Sessions Trial No. 213/1997 vide his judgment dated 30th November, 1998 by which learned Second Additional Sessions Judge after holding the appellant guilty of causing death of his son Ganeshram has convicted him under Section 302 of I.P.C. and sentenced him to undergo imprisonment for life.

3. The allegations against the appellant are that on 7-9-1997 on the day of festival Navakhai, while celebration of festival was going on after taking liquor, appellant's son Panchram went to call the deceased for meals but instead of accompanying him, he

continued to dance, as a result of which a scuffle took place between them and infuriated with this demeanour of the deceased, the appellant assaulted him by a wooden plank over his head as a result of which he fell on the ground. He was taken inside the house and subsequently taken to police station Lailunga on 8-9-1997 where complainant Bhawan lodged first information report at 10.00 noon. Ganeshram was taken to Community Health Centre, Lailunga where Dr. S. N. Upadhyay P.W. 8 after examining Ganeshram declared him dead. On the basis of information given, Station House Officer recorded *Merg* intimation. After performing the inquest of Ex. P-3 over the dead body, the body was sent for autopsy to Community Health Centre, Lailunga where Dr. S. N. Upadhyay P.W. 8 conducted post mortem and submitted his report of Ex. P-11. Earlier the offence was registered under Section 307 of I.P.C. however after the death of the deceased, the offence was converted into Section 302 of I.P.C. During investigation, plain soil, blood stained soil and a piece of door frame stained with blood were taken into possession vide Ex. P-4. The wooden plank-weapon of offence was seized from P.W. 2 Vrindavati vide Ex. P-5 and a wood plank was seized vide Ex. P-6 was also seized. Site map was prepared vide Ex. P-7. Seized articles wooden plank and piece of door frame were sent to the doctor for his opinion regarding presence of blood vide Ex. P-12-A and opinion of the doctor is Ex. P-12 by which the doctor has advised for chemical examination. After completing the investigation, chargesheet was filed in the Court

Judicial Magistrate First Class, Gharghoda who in turn committed the case to the Court of Session and the same was received on transfer for trial by learned Additional Sessions Judge. Learned trial Court framed charge under Section 302 of I.P.C. against the appellant who abjured his guilt. The prosecution in order to establish the charges against the appellant examined 9 witnesses in all and thereafter statement of accused under Section 313 of Cr.P.C. was recorded in which the appellant denied the circumstances appearing against him in the prosecution case and pleaded innocence and false implication. However, learned Additional Sessions Judge after hearing the Public Prosecutor and Counsel for the appellant, convicted and sentenced the appellant as above.

4. Homicidal death of the deceased Ganeshram is not in dispute. Even otherwise from the statement of P.W. 8 Dr. S.N. Upadhyay who conducted the post mortem and submitted his report of Ex. P-11 and in which he found one lacerated wound over the temporal parietal reason in left side measuring 6 cm x 2 ½ cm x bone deep and on internal examination, he has found line fracture over skull bone and clotted blood under the wound and has opined that the cause of the death of the deceased was comma due to head injury, the homicidal death of the deceased is established.

5. Learned counsel for the appellant submits that from perusal of the evidence available on record, it would be evident that the incident took place suddenly in a spur of moment when the two sons of the appellant, the deceased and Panchram were quarreling. She further submits that the allegation against the appellant is that he inflicted

the single blow by a wooden plank as a result of which the deceased fell unconscious and he died on the following day while he was being taken to hospital, and therefore, in the aforesaid circumstances intention to cause death of the deceased cannot be attributed to the appellant. Reliance is placed on AIR 2004 SC 387 (Bagdi Ram –v- State of Madhya Pradesh) and it is contended that the court below was not justified in holding the appellant guilty under Section 302 of I.P.C. as in the facts and circumstances of the case, the offence does not travel beyond Section 304 Part I of I.P.C. as the alleged offence comes within exception 4 of Section 300 of I.P.C.

6. On the other hand, learned counsel for the State supports the judgment.

7. We have heard the learned counsel for the parties. We have perused the record and also the impugned judgment. So far as the involvement of the appellant in crime in question is concerned, the prosecution has tried to establish the above fact by examining eye-witness P.W. 2 Vrindavati, wife of deceased who has stated that on the date of incident, Panchram and her husband were quarreling, at that time, her father-in-law the present appellant Lagan Sai assaulted Ganeshram on his head with a wooden plank, as a result of which the blood started oozing. Her father-in-law started running with land papers. Her husband became unconscious. She tried to revive her husband by massaging with kerosene oil. In the following morning, she along with her mother-in-law, Jeth, father-in-law and her father Ghasiram and Kotwar Bhawan Singh took the deceased to hospital where the doctor declared him dead. In the cross-examination, this witness has admitted that on the day of festival, men and women both had consumed liquor. However, she has denied the suggestion that

while her Jeth and deceased were involved in the scuffle, the deceased fell on the frame of the door and as a result of which he sustained injury and fell unconscious. She has categorically stated that the present appellant assaulted the deceased with the wooden plank. This witness is dully corroborated by the Statement of P.W. 1 Bhawan Singh who has lodged the First Information Report in the police station and who has stated that when he was returning from the house of Ganeshram, he met Lagan Sai on way near the tank and on being asked about the incident, he admitted that in the night he had consumed liquor and he had assaulted by a wooden plank. Similar is the statement of P.W. 3 Shyam Lal who has also stated that he recognizes the accused. While he was sitting on his shop, Lagan Sai had told him that he had killed Nanki. Ganesh is called Nanki in the village. This witness has also stated that wife of Ganeshram had also informed him that he assaulted by the wooden plank. The version of P.W. 2 Vrindavati finds corroboration from statement of P.W. 8 Dr. S.N. Upadhyay who has noticed corresponding injury over the head of the deceased as also from the first information report in which the appellant has been named as perpetrator of the offence. Thus, from the above evidence, we are of the considered opinion that the prosecution has been able to establish involvement of the appellant in the crime in question beyond reasonable doubt and the learned court below has not committed any error or infirmity in holding the appellant guilty of causing death of Ganeshram.

8. The second question to be decided in this appeal is whether the court below was justified in convicting the appellant under Section 302 of I.P.C. From the evidence available on record, we find that there was no motive attributed to the appellant to kill his own son. Though

the wife of the deceased namely Vrindavati has stated in her deposition that after assaulting the deceased, the appellant started running with land records but the above portion of the statement does not find place in diary statement and the same is omission. The appellant inflicted a single blow by a wooden plank over the head of the deceased. There was no pre-meditation. The incident took place in a spur of moment under the heat of passion. We also noticed that when the deceased was taken to hospital on following day, the appellant accompanied the deceased to the police station and thereafter to the hospital. Thus considering the evidence appearing in the case, we are of the considered opinion that the offence committed by the appellant does not travel beyond Section 304 Part I of I.P.C. and the court below was not justified in convicting the appellant under Section 302 of I.P.C. We are also fortified with the judgment in Bagdi Ram (supra).

9. In the result, the appeal preferred by the appellant is partly allowed. Conviction of the appellant under Section 302 of I.P.C. is altered to one under Section 304 Part I of I.P.C

10. Counsel for the appellant submits that the appellant is in jail since 9-9-1997 which is not disputed by the learned counsel for the State.

11. Since the appellant is in jail since 9-9-1997 and has undergone about 9 years of jail sentence, he is sentenced for the period already undergone by him. He shall be set at liberty forthwith if not required in any other case

Appeal partly allowed.

Sd/-
Fakhruddin
Judge

Sd/-
DHIRENDRA MISHRA
Judge